IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO.1848 of 2002

Titan Industries Ltd.,)
a Company incorporated under)
the Companies Act, 1956, having)
its office at "The Metropolitan")
9th Floor, East Wing, Plot)
No.C26/27, Bandra Kurla Complex)
Bandra (East), Mumbai-400 051.)..PETITIONER

Versus

1.Union of India through the)
Ministry of Consumer Affairs,)
Food and Public Distribution)
having its address at Krishi)
Bhavan, New Delhi-110001.)
2.Inspector of Legal Metrology,)
Malad Division, Mumbai Dist.)
Region.)
3.State of Maharashtra)
through its Secretary,Ministry)
of Food, Civil Supplies and)
Consumer Protection having)
its office at Mantralaya,)
Nariman Point, Mumbai-40-0 001)
4.The Deputy Controller of Legal)
Metrology, Mumbai Metropolitan)
Region, 601, Arun)
Chambers, Tardeo Road, Tardeo)
Mumbai-400 007)
5.Director of Standards of)
Weights and Measures (Ministry)
of Food & Civil Supplies))
Government of India, having)
its office at 12-A, Jamnagar)
House, New Delhi.)
6.Controller of Weights &)
Measures, Department of Legal)
Metrology (Weights & Measures))
Government of Maharashtra,)
having its office at Free Press)
Marg,Nariman Point,)
Mumbai-400 021.)..Respondents

Mr. Virag V. Tulzapurkar i/b. M/s.Wadia Ghandy &

Co., for the Petitioner.
Mr. S.K. Nair, A Panel Counsel for the Respondents.

CORAM: F.I. REBELLO &
MRS. V.K.TAHILRAMANI JJ.
DATE : 10th July,2006

JUDGMENT (PER F.I. REBELLO, J.):

. Petitioner a Company incorporated under the Indian Companies Act, carries on business as manufacturers and sellers of watches and their components. The respondents had effected seizure of watches belonging to the petitioner, contending that they have been sold in violation of the provisions of the Standards of Weights and Measures (Packaged Commodities) Rules 1977, hereinafter referred to as the Rules, which have been framed under the provisions of the Standards of Weights & Measures Act, 1976 which hereinafter shall be referred to as the Act. We may now gainfully refer to the provisions of the Standards of Weights and Measures (Enforcement) Act, 1985, hereinafter referred to as the Enforcement Act and the Rules framed thereunder which shall be referred to as the Enforcement Rules. By the letter dated 18th June, 2002 the petitioners were informed that the Rules are applicable to the petitioners products and if the petitioner did not compound the case at the Departmental level within

15 days of the date of receipt of the notice the Respondents will be bound to lodge a case against the petitioner in a Court of law. It is this order which is the subject matter of challenge before us.

2. It is the case of the petitioners that they are manufacturers and dealers in watches and watch components. The watches are sold under the brand name or trade mark "Titan" and are marketed through various retail dealers appointed by them. The watches are kept for display and sale and/or storage in showrooms and outlets situate at various places throughout the city of Mumbai and the State of Maharashtra and are sold by the piece. Customers, it is contended, insist upon inspection/checking and handling the watches and some times on wearing the same on his/her wrist, before making the decision whether to purchase the watch or not. Many a times customers also require the strap of the watch to be changed and replaced with a new/different strap. The goods by their very nature are such that they cannot be sold in a packaged form, but have to be allowed to be handled and inspected and even worn by the customer, before he/she decides whether to purchase the same or not. The petitioner,

manufactures and sells numerous models of watches and these watches which are kept for sale at their retail outlets are to be displayed in an open and unpacked form to provide a wider choice to the customers and facilitate their decision as to the choice of the model.

3. Though the watches are not packed in any particular form, having regard to the fact that the goods are delicate and precision engineering based products, at the same time it is necessary to protect the watches adequately, during transportation and storage and also display, so that they remain free from dust and dirt and also from wear and tear and/or damage that is likely to be caused during transportation/storage and even display. For this purpose the watches are put in some sort of covering which may be either a glass case or a plastic box or card board box or in any appropriate form to ensure their protection. This outer case or covering, it is submitted, is not a package in the sense in which the word is used under the Act and the Rules. They are not sealed packages, but are left free to be opened because the customer is entitled to inspect and handle the

watches before he/she decides to purchase the same. There is no specific type of boxes or covering for a particular type of watch. The boxes and outer case/covering are inter-changable.

4. A petition was filed by the petitioners herein along with their associate company Timex Watches Ltd. being Writ Petition No.2250 of 1994 to challenge the action then taken by the respondents officials under the Act and the Rules. Purporting to act under the provisions of the Act, the respondents had wrongfully effected seizure of the watches and threatened to take criminal action. An interim order was passed by this Court on 10th October, 1994 and the petition was admitted restraining the respondents, from taking any action in furtherance of the impugned action/seizure. On 22nd October, 2001 an order came to be passed by the division Bench and whilst disposing of the petition it was, inter alia directed, that the respondent Nos. 3 and 4 shall be free to give notice to the petitioner, calling upon them to show cause as to why their products are not covered under the Packaged Commodities Rules, 1977 and after hearing the petitioners to pass appropriate orders. It is

the case of the petitioners that certain directions were given. Inspite of that the Malad Division of the Respondent No.4 in gross violation of the order dated 22nd October, 2001 carried out search operations in the Malad (West) godown of the petitioner wherein the petitioners were forced to sign an undertaking by the officers of the Respondent No.4. It is not necessary to refer to the various proceedings that transpired. Suffice it to say that consequent to the hearing, the petitioners have been informed by letter dated 18th June, 2002 that the Rules were applicable to the petitioners goods and if the petitioners did not compound the same, then action will be taken according to law.

5. Counsel have advanced arguments and also relied upon the judgements which will be averted to in the course of the discussion. We may gainfully make a reference to an unreported judgment of this Court in the case of Subhash Arjandas Kataria vs. The State of Maharashtra &Ors., in Writ Petition No.120 of 2004 decided on 5th May, 2006. The stand of the respondents there also was that as sun glasses are kept in packages, the provisions of the

Act and the Rules are applicable to them. After considering the provisions of the Act and the various judgments, this Court was pleased to hold as under:-

> "From the above discussion, considering the provisions referred to earlier, it would be clear that the Expression, pre-packaged commodity would be applicable to commodities which are packed and the commodity packaged has a pre-determined value and that value cannot be altered without the package sold being opened at the time of sale or the product undergoes a modification on being opened. In the instant case the sun glasses whether they come in a box or not in so far as the retailer is concerned at the time when they are being sold to the consumer are not in a packaged form. Even if it is held that they come in a packaged before they are sold to the consumer by removing them from the box, the value does not alter nor does the product undergo a perceptible modification. The explanation is also not attracted because the package is not opened

> for the purpose of testing as in the case of electronic bulbs. The sun-glasses are tested by the buyer for his suitability. We are, therefore, of the considered opinion that sun glasses whether it be a frame or glass is not a prepacked commodity within the definition of the expression "pre-packed" under Rule 2(l) of the Rules."

6. The question is whether the judgment of the Court requires to be reconsidered. On behalf of the petitioners learned Counsel has drawn our attention to the judgment of the Apex Court in M/s.India Photographic Co. Ltd. vs. H.D.Shourie, AIR 1999 SC 2453. That was a case from an order passed by the Consumer Disputes Redressal Commission. The Apex Court was considering the provisions of the Act and the Rules, considering the scheme of the Act and the Rules the Apex Court observed as under:-

> "The Standards of Weights and Measures (Packaged Commodities) Rules 1977 (hereinafter called "the Rules) Chapter II deals with the provisions applicable to packages intended for retail sale. Rule 3

> provides that the provisions of the aforesaid Chapter shall apply to packages intended for retail sales and the expression "packaged" when it occurs, shall be construed accordingly....."

. Our attention is next invited to the following observations:-

> ".....A perusal of Rule 6(1) of the Rules clearly shows that the stress of the sub-rule is upon the package and not upon the person manufacturing or selling the package....."

From the above, it is submitted by the learned Counsel that the Act and the Rules have laid stress on the word "package". In other words what we have to consider is the package and not the contents of the package. It is pointed out that goods could be packed for the purpose of safety while being transported or the like and not necessarily in a form where they cannot be sold otherwise than in a packaged form.

7. On the other hand on behalf of the respondents learned Counsel has taken us to the various Rules and the Judgments of the Apex Court to point out that the object of the Act is to protect the consumer. Once the goods are in a packaged form the provisions of the Act and Rules will apply. The object behind doing so is that the consumer is protected from being charged exorbitant charges. It is not necessary to refer to all the Rules as those Rules will apply if we hold that they are pre-packed commodity in a package. Our attention is invited to the Judgment of the Apex Court in Criminal Appeal No.963 - 965 of 1999 between the State of Kerala & Ors. vs. M/s.Flora & Ors., dated September 17, 1999. The issue before the Apex Court was in the matter of Criminal prosecution launched against the respondents. The High Court took a view that it was not fair and proper to prosecute the retail dealer when he cannot add anything to the packet packed by the wholesaler or manufacturer, who is the packer and accordingly allowed the petition filed by the retailer. This was the issue before the Apex Court. The Apex Court took the view, that the retailer also could be prosecuted and the High Court was wrong in quashing the prosecution against the respondents.

This order of the Apex Court nowhere deals with the issue as to what is a packaged commodity. The only issue before the Apex Court was whether the retailer could be prosecuted and that was answered in the affirmative.

. Our attention is then invited to an unreported judgment of the Division Bench of the Andhra Pradesh High Court in the case of Wester International Limited vs. Union of India in Writ Petition No.6476 of 1997. In that case the petition filed was for a declaration that the Rules do not apply to watches manufactured and marketed by the 1st petitioner and to quash the proceedings. It appears that the petitioner nor their Counsel were present. The learned Bench observed that the affidavit filed, did not disclose any foundation for making any detailed enquiry to the constitutional validity of Rule 2(1) of the Rules. The Court also noted that nothing was stated as to how the Rules were beyond the competence of the Central Government. Firstly the said judgment was exparte and secondly the matter has not been disposed on merits by any discussion. The other judgment relied upon was of the single Judge of the Andhra Pradesh

High Court in the case of BPL Sanyo Ltd. vs. Union of India and others in Writ Petition No.17605 of 1994 decided on 8th August, 2003. Before the learned Judge the judgment in India Photographic Co. Ltd. vs. H.D. Shourie was placed and the Court was of the opinion that in view of that judgment no further orders were required.

. As we have noted earlier in so far as the judgment in India Photographic Co. Ltd. (supra) who were appellants before the Apex Court were challenging the order of the District Consumer Disputes Redressal Forum, which was affirmed by the National Consumer Forum. The contention was that the price printed on the packet was mandatory under the Rules. Proceedings were pending before the District Forum. The High Court did not stay the proceedings and in view of that the Tribunal proceeded to pass an order. The Appeal preferred before the State Consumer Disputes Redressal Commission was disposed of with some directions. The Appellant approached the National Consumer Disputes Redressal Commission which also dismissed the Revision. The contention was that it was the manufacturer alone who was liable and not the

Distributor. That was rejected and the Apex Court noted that what is important was the stress upon the package and not upon the person manufacturing or selling the package.

. In our opinion none of the judgments cited on behalf of the respondents have answered the issue finally.

8. We may gainfully reproduce Section 2(b) of the Act which reads as under:-

> "2(b) "commodity in packaged form" means commodity packaged, whether in any bottle, tin, wrapper or otherwise, in units suitable for sale, whether wholesale or retail."

We may now refer to Rule 2(l) of the Rules, which defines pre-packed commodity. Rule 2(1) reads as under:-

> "pre-packed commodity with its grammatical variations and cognate expressions, means a commodity or article or articles which, without the purchaser being present, is

placed in a package of whatever nature, so that the quantity of the product contained therein has a predetermined value and such value cannot be altered without the package or its lid or cap, as the case may be, being opened or undergoing a perceptible modification, and the expression 'package', wherever it occurs, shall be construed as a package containing a pre-packed commodity."

Explanation (1) Where, by reason merely of the opening of a package, no alteration is caused to the name, quantity, nature or characteristic of the commodity contained therein, such commodity shall be deemed, for the purposes of these rules, to be a pre-packed commodity, for example, an electric bulb or fluorescent tube is a pre-packed commodity, even though the package containing it is required to be opened for testing the commodity;

Explanation II:.....

From the above what is clear is that commodity in packaged form means a commodity packed whether in

any bottle, tin, wrapper or otherwise. The package must be in units suitable for sale, whether wholesale or retail. From a reading of the Rule, what emerges is that the pre-packed commodity must be placed in a package of whatever nature without the purchaser being present. The product in the package must have a predetermined value, which value cannot be altered without the package or its lid or cap, as the case may be, being opened or the product undergoing a perceptible modification. In other words on the package being opened or its lid or cap being opened, the predetermined value of the commodity must stand altered or undergo a perceptible modification. These two requirements, therefore, have to be met, for it to be a prepacked commodity and the expression package is to be construed as a package containing prepacked commodity. In other words the stress is on the package containing the prepacked commodity.

. Does the explanation make a difference? In our opinion the explanation cannot defeat the main Rule itself. An explanation is normally to add to what may not be contained in the Rule or to explain something. In this case the illustration is given

of a commodity like electric bulb or fluorescent tube. An electric bulb or fluorescent tube has to be normally removed from the package for testing as to whether it is functional. Being removed from the package it does not undergo any perceptible change or suffers any decrease in value. If the definition is considered without the explanation, the electric bulb will not fall within the expression of pre-packed commodity. By the explanation, such a prepacked commodity, because it has to be unpacked from the package and even if there be no perceptible change or alteration in value is included in the definition as a prepacked commodity. In other words apart from what is set out in the definition, other commodities which even if removed

also do not undergo a perceptible change or decrease in value will still' be treated as a prepacked commodity, if removed as and by way of testing. It is based on that the learned Counsel for the Respondents contends that every commodity in a package, will be a pre-packed commodity. Let us, therefore, try to understand the true import of the explanation. The Legislature in its wisdom, therefore, had included goods in packaged form,

which otherwise would not fall within the definition of pre-packed commodity. A proper reading or consideration, can only means those commodities which intrinsically require to be packed and without being packed they cannot be sold, and merely because they are removed from the package for testing will not cease to be pre-packed commodity. It does not mean that a package, merely because it is packed for protection or safety in the course of conveyance by virtue of the explanation becomes prepacked commodity. The test would be whether by the very nature of the goods, whether it can be sold without being pre-packed. If the intention of the Legislature or the Rule making Authority was to include every commodity which was packed then there would have been no need to provide for the explanation. The Rule itself could have produced that every commodity which is packed or in other words comes to the retailer in a packed form will be a pre-packed commodity. That not being the intention, by the explanation only some pre-packed commodities which by the very nature of the product, require to be packed before sale, have been included by the explanation to fall within the expression pre-packed commodity.

9. Let us now look at some judgments as to how some other High Courts have interpreted the Rule. In Philips India Limited vs. Union of India & etc. 2002 Writ L.R. 140 what was in issue before a single Judge of the Madras High Court were electronic items like TV, etc. After considering the various provisions in so far as prepacked commodity, the Court observed as under:-

> "The expression "Pre-packed commodity", in my considered view, would mean and include a commodity which is placed in a package of whatever nature so that the quantity or product contained therein has a pre-determined value and contents of such carton cannot be altered without the package or its lid or cap, as the case may be being opened or undergoing a perceptible modification."

A learned Judge of the Andhra Pradesh High Court in Eureka Forbes Limited vs. Union of India & Ors., AIR 2003 Andhra Pradesh 275, was dealing with vacuum cleaners which come in a box, as to whether because

they come in a box are pre-packed commodity. The learned Judge followed the judgment of the Madras High Court in Philips India Ltd. Vs. Union of India, 2002 (1) Mad. L.W. (Cri.) 211 and held that the Rule applies to commodities which are incapable of sale in any manner other than in a packaged form and that the law in question has no application to packages which are packed only for the convenience of the customers for the purpose of safe transportation and for protection during storage and handling.

10. The only basis on which on behalf of the Respondents contention was advanced as pointed out earlier is that the definition of the expression "pre-packed commodity" and the Explanation 1 will bring all commodities once they are packed,subject to the provisions of the Act and the Rules. We have rejected that contention. In our opinion the test would be firstly whether by the very nature of the commodity it requires to be packed before it can be sold. Secondly, in the event a package is opened does it undergoe any perceptible change or reduction in value. If these twin tests are met then only can it be said that the package contains a pre-packed

commodity. Merely because the commodity is packed for protection during conveyance or otherwise or in the fancy package, would not result in the package becoming a pre-packed commodity. The explanation as we have explained earlier is only to include those commodities which by the very nature of goods have to be packed and on being opened do not undergo a change in the pre-determined value or a perceptible modification. If the explanation was not included, commodities like electronic bulbs which otherwise by their very nature required to be packed, before being sent from the manufacturing site would not be included as they would not fall within the expression "pre-packed commodity". The Rule, therefore, along with the explanation aims to include only those pre-packed commodities which by the very nature are required to be packed before they are sold.

11. Coming to the facts of the present case, can it be said that the watch is a pre-packed commodity. The facts as set out earlier will indicate that the watch is removed from its package and displayed. On it being removed there is no decrease in its predetermined value nor does it undergo a

perceptible change. The explanation also will not be attracted as a watch by its very nature, does not require to be pre-packed. The package is only meant for the purpose of safety and/or to keep away dirt or dust. Therefore, considering the Rule and the explanation a watch cannot be said to be a pre-packed commodity. Once we so hold, the petition as filed would have to be allowed.

12. In the light of that petition made absolute in terms of prayer clauses (a) and (b). In the circumstances of the case there shall be no order as to costs.

(F.I.REBELLO, J.)

(MRS. V.K. TAHILRAMANI, J.)